

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition by the Colorado Public Utilities	)	
Commission, Pursuant to 47 C.F.R.	)	CC Docket No. 96-45
§ 54.207(c), for Commission Agreement	)	
in Redefining the Service Area of Delta	)	
County Tele-Comm, Inc., a Rural	)	
Telephone Company	)	
	)	
	)	

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to comments filed in the above captioned proceeding.<sup>1</sup> OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

OPASTCO agrees with commenters who have urged the Commission to reject the Colorado Public Service Commission's (CPUC) proposal to fragment the study area

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<sup>1</sup> *The Colorado Public Utilities Commission Petitions to Redefine the Service Area of Delta County Tele-Comm, Inc. in the State of Colorado*, CC Docket No. 96-45, Public Notice, DA 02-2383 (rel. Sept. 25, 2002). (Public Notice)

served by Delta County Tele-Comm, Inc. (Delta) into six service areas at the wire center level for purposes of defining the service area obligations of any future eligible telecommunications carriers (ETC). To begin with, the CPUC's generalized rule requiring the automatic division of the service area of an incumbent local exchange carrier (ILEC) which disaggregates its federal universal service support does not comply with the Telecommunications Act of 1996 (1996 Act) and the Commission's determination requiring that service area changes be considered with regard to a particular company. Furthermore, the CPUC's proposal to designate each of Delta's wire centers as a service area in an effort to spur competition improperly presupposes that any future request for ETC status will in fact serve the public interest. Lastly, the proposed service area redefinition has significant implications for Delta's ability to serve as the carrier of last resort (COLR), that have not been properly considered in the context of a specific carrier request for ETC designation.

## **II. THE COMMISSION SHOULD REJECT CPUC'S PROPOSED SERVICE AREA DEFINITION AS IT DOES NOT COMPLY WITH THE LAW AND ALSO RAISES SIGNIFICANT PUBLIC INTEREST CONCERNS**

The Public Notice states that the CPUC's rules provide that the disaggregation plans of each ILEC will be used as a basis to redefine that carrier's service area.<sup>2</sup> Since Delta disaggregated its study area at the wire center level, the CPUC has now, consistent with its rule, sought redefinition of Delta's service area for purposes of determining federal universal service obligations of any additional ETCs. However, the CPUC's request must be rejected as the generalized rule that prompted it is in conflict with the

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<sup>2</sup> Public Notice, pp. 1-2.

1996 Act and a previous Commission determination concerning the definition of the service area of a rural telephone company.

In an Order on Reconsideration of the Rural Task Force Order, the Commission ruled on a petition for reconsideration, which sought approval for the automatic disaggregation of the service areas of rural ILECs that choose to disaggregate their universal service fund (USF) support.<sup>3</sup> The Commission rejected the request, on the grounds that such a measure would be inconsistent with Section 214(e)(5) of the 1996 Act.<sup>4</sup> This provision requires that:

In the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.<sup>5</sup>

Thus, the CPUC’s rule, which calls for the automatic disaggregation of the service area of any ILEC that elects to disaggregate its USF support,<sup>6</sup> runs counter to this provision, as it ignores the fact that such changes must be considered on a company-by-company basis.<sup>7</sup>

In addition, the 1996 Act requires that, prior to the designation of additional ETCs in an area served by a rural ILEC, “the State commission shall find that the designation is

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<sup>3</sup> See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, National Telephone Cooperative Association*, Order on Reconsideration, 17 FCC Rcd 11472, 11479, para. 17 (2002).

<sup>4</sup> *Ibid.*

<sup>5</sup> 47 U.S.C. § 214(e)(5) (emphasis added). The Commission’s service area rules mirror the language contained within the 1996 Act. See, 47 C.F.R. §54.207(b).

<sup>6</sup> Public Notice, p. 2. See also, 4 Code of Colorado Regulations, 723-42-11.

<sup>7</sup> See, *Delta County Tele-Comm, Inc. and the Colorado Telecommunications Association (Delta, et al)*, pp. 17-18, USTA, pp. 3-4.

in the public interest.”<sup>8</sup> The CPUC has not received any ETC designation requests to consider, yet it has asked for approval to dissect Delta’s service area, in order to encourage competition. However, Congress did not assume that competition would necessarily serve the public interest in areas served by rural telephone companies.<sup>9</sup> That is why it required state commissions to make a public interest finding prior to designating additional ETCs. Thus, absent any ETC designation requests, it is premature for the CPUC to seek redefinition of Delta’s service area as it simply does not have the specific information required to adequately assess whether any competition would be in the public interest, as mandated by the 1996 Act.

It is evident by the public interest language of Section 214(e)(2) that Congress intended for states to weigh the costs of supporting multiple carriers against any consumer benefits prior to designating an additional ETC in a rural telephone company’s service area. The division of Delta’s service area, in order to “promote competition” as desired by the CPUC, has significant implications for Delta’s ability, as the COLR, to continue to provide quality, “reasonably comparable” service throughout its study area. This is because service area disaggregation would allow competitors to cream skim the most lucrative segments of Delta’s study area, weakening Delta’s ability to adequately serve those areas and customers that competitors deem undesirable.<sup>10</sup>

Consequently, a proper public interest examination by a state commission must consider whether or not supporting multiple ETCs in a particular rural ILEC’s service

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<sup>8</sup> 47 U.S.C. § 214(e)(2).

<sup>9</sup> *See, Delta, et al*, pp. 9-11.

<sup>10</sup> *Delta, et al*, accurately explains how support disaggregation alone does not eliminate the ability of competitors to cream skim the most desirable customers. *See, Delta, et al*, pp. 14-17. *See also*, USTA, pp. 5-6.

area is a judicious use of the limited USF resource. Furthermore, it must assess whether the ILEC, as the COLR, would continue to have the incentive to invest in network infrastructure under such a scenario. It is essential that the CPUC address these issues in the context of an actual review of an ETC designation request, rather than presupposing that supported competition will always serve the public interest in rural areas.

### **III. CONCLUSION**

Therefore, for the reason stated above, the Commission must reject the CPUC's request to segment Delta's study area into multiple service areas for the purposes of future ETC designations.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
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October 25, 2002

## **CERTIFICATE OF SERVICE**

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 25<sup>th</sup> day of October, 2002, to those listed on the attached list.

By: /s/ Jeffrey W. Smith  
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**DA 02-2383**

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